



POLICE DEPARTMENT

April 4, 2014

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Carlos Guadalupe
Tax Registry No. 938623
46 Precinct
Disciplinary Case No. 2011-6430

The above-named member of the Department appeared before me on June 20, 2013 and November 13, 2013, charged with the following:

1. Said Police Officer Carlos Guadalupe, while assigned to the 46th Precinct, on or about July 15, 2010, did engage in conduct prejudicial to the good order, efficiency and discipline of the Department, in that said Police Officer signed a Criminal Court Complaint that contained factually inaccurate information. (*As amended*)

P.G. 203-10, Page 1, Paragraph 5 PUBLIC CONTACT-GENERAL
REGULATIONS

2. Said Police Officer Carlos Guadalupe, while assigned to the 46th Precinct, on or about July 9, 2010, did engage in conduct prejudicial to the good order, efficiency and discipline of the Department, in that said Police Officer caused a Criminal Court Complaint that contained inaccurate information to be filed with the Bronx County Criminal Court.

P.G. 203-10, Page 1, Paragraph 5 PUBLIC CONTACT-GENERAL
REGULATIONS

3. Said Police Officer Carlos Guadalupe, while assigned to the 46th Precinct, on or about July 9, 2010, did fail to make accurate entries in his Activity Log (PD 112-145) regarding his encounters [sic] with an individual known the Department [sic], as required.

P.G. 212-08, Page 1, Paragraph 1 ACTIVITY LOGS

The Department was represented by Mary Lynne Frey, Esq., Department Advocate's Office. Respondent was represented by Stuart London, Esq.

Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Guilty of Specification No. 1. Respondent is found Not Guilty of Specification Nos. 2 and 3.

SUMMARY OF EVIDENCE PRESENTED

Introduction

It is not disputed that on July 9, 2010, Respondent was on duty assigned to the 46 Precinct Conditions Unit performing patrol duties in an unmarked Department van along with Police Officers Charles Awani and Herminio Colon. The officers were dressed in plainclothes. Their supervisor was Sergeant Sasha Rosen. At about 1625 hours, the team received a radio transmission and responded to [REDACTED] in the Bronx which is a residential apartment building that is registered with the Department's Clean Halls program. Upon arriving in front of [REDACTED], the officers observed Person A and Person B exiting the building.

In order to ascertain whether the men had been trespassing in the building, the officers exited their van and called out to the two men. Person B stopped but Person A continued walking away. Rosen and Colon approached Person B. Respondent and Awani

approached Person A. Respondent grabbed Person A's wrist. A hypodermic needle that Person A was holding in his hand punctured Respondent's hand. Respondent was transported by ambulance to a hospital emergency room where Respondent was provided the standard "cocktail" of prescribed medications.

Rosen assigned Colon as the arresting officer who would process the arrest of Person A and sign the Criminal Court Complaint. After speaking to Respondent at the hospital, Colon prepared and signed a Criminal Court Complaint which stated, in part, that he had been informed by Respondent "that defendant pulled his hand back and then thrust said syringe forward, causing said syringe to strike informant in the back of the hand." [Department's Exhibit (DX) 1]

Respondent made an entry in his Activity Log on July 9, 2010, which states: "F/O [REDACTED] assault on a P.O. Deft. did stab P.O. with needle in right hand. Deft. did punch P.O. Guadalupe in right thigh causing pain." [Respondent's Exhibit (RX) D]

On July 15, 2010, Respondent spoke to a Bronx County Assistant District Attorney who then prepared a Superseding Information in which Respondent, as the deponent, alleged that Person A had "swung his hand forward causing said syringe to strike deponent's hand." (RX C)

Department Advocate's Case

The Assistant Department Advocate (the Advocate) called Police Officers Herminio Colon and Charles Awani and Sergeant Sasha Rosen as witnesses.

Police Officer Herminio Colon

Colon, who is presently assigned to Troop B of the Mounted Unit, recalled that on July 9, 2010, he was on duty assigned to the 46 Precinct Conditions Unit. Colon testified that at the hospital, Sergeant Rosen assigned him to be the arresting officer who would process the arrest of Person A and sign the Criminal Court Complaint even though Colon did not want to be the arresting officer because he had not seen "exactly what had happened." Respondent described to Colon how he came to be punctured by the needle that Person A was holding. Respondent told Colon that after he grabbed Person A's wrist, Person A "pulls his hand away from his grab [sic] and then pushes his hand forward in a thrusting motion to" Respondent's "hand stabbing" Respondent "on top of the knuckle area of his hand." After speaking to Respondent at the hospital, Colon signed a Criminal Court Complaint which stated, in part, that he had been informed by Respondent "that defendant pulled his hand back and then thrust said syringe forward, causing said syringe to strike informant in the back of the hand." [Department's Exhibit (DX) 1]

On cross-examination, Colon testified that he was not aware that Respondent had [REDACTED] after this incident. Colon recalled that Respondent telephoned his family from the hospital and that he was upset, concerned and angry that as a result of having been punctured by Person A's needle he could contract AIDS. Colon testified that he did not use the word "stab" in the Criminal Court Complaint he signed.

On redirect-examination, Colon initially testified that it was his present recollection that Respondent had not used the word "thrust" when he described to Colon how he came to be punctured by the needle that Person A was holding and that the word "thrust" in the Criminal Court Complaint was "my word." Colon testified that he had

entered the word "stab" on his online arrest report because Respondent had used the word "stab" in describing to Colon how he was punctured by the needle that Person A was holding. Colon explained that when the Assistant District Attorney asked him if Person A's arm had made an up and down stabbing motion, he told her that it was not an up and down stabbing motion and that is why the word "thrust" was entered in the Criminal Court Complaint.

At his official Department interview, Colon had stated that Respondent had told him that after he grabbed Person A's wrist, Person A had pulled his hand out "and thrust forward. Not a stabbing motion but thrust forward on top of his hand."

Police Officer Charles Awani

Awani, who is presently assigned to the 46 Precinct, recalled that on July 9, 2010, he was on duty assigned to the 46 Precinct Conditions Unit. Awani recalled that he and Respondent approached Person A and that after Respondent grabbed Person A's wrist, Respondent started to ask Person A questions about his presence in the building he had just exited. When Awani looked over to see if Rosen and Colon were having any problems with the male that they had stopped, Awani heard Respondent exclaim, "Ah, he fucking stabbed me!" When Awani looked back at Respondent and Person A, he saw a needle sticking out from between Respondent's fingers. Respondent pulled the needle out and threw it on the ground. Person A was arrested and placed in a van. Inside the van, Person A kept repeating, "I'm sorry. I'm sorry."

On cross-examination, Awani agreed that Person A had resisted arrest by pulling away from Respondent when Respondent tried to grab his wrist and that after Respondent

was stuck with the needle, Person A struck Respondent in the chest. Awani confirmed that he signed a Witness Statement-Injury to Member of the Department (PD429-065) for Respondent which stated that Person A had possessed a needle which punctured the skin of Respondent. (RX B)

Sergeant Sasha Rosen

Rosen, who is presently assigned to Transit District 23, recalled that on July 9, 2010, he was on duty assigned as the supervisor for the 46 Precinct Conditions Unit team consisting of himself, Respondent, Colon and Awani. Rosen recalled that after he and Colon had secured the male (Person B) they had stopped and had told Colon to put the male in their van, he looked over to see if Respondent and Awani were having any problems with the male that they had stopped. He saw that a “scuffle” was taking place and he then saw Respondent back up suddenly holding a needle in his left hand. Respondent said, “He stung me with the needle.” Respondent made “like a jabbing gesture, like a jab in the hand with needle.” Rosen interpreted the gesture as a lunge.

Awani handcuffed the perpetrator. An ambulance transported Respondent from the scene to the hospital emergency room. Rosen assigned Colon to be the arresting officer who would process the arrest of the male who had stung Respondent with the needle. Rosen confirmed that he did not see Respondent get stung with the needle.

On cross-examination, Rosen testified that he personally saw Respondent get punched in the leg by the perpetrator. Rosen confirmed that he signed a Line-of-Duty Injury Report for Respondent which stated that the “perpetrator struck” Respondent with the needle. (RX A)

Respondent's Case

Respondent testified in his own behalf.

Respondent

Respondent's testimony regarding his initial observations of Person A and the man who was with him and his testimony that he approached Person A because the two men had been seen coming of a Clean Halls building was consistent with the testimony provided by Colon, Awani and Rosen. Respondent recalled that as he began questioning Person A about whether he resided in the building he had just come out of, Person A tried to walk away from him. Respondent observed that Person A was holding something in his left hand. Respondent testified that as he reached forward and grabbed Person A's left wrist, Person A pulled back and when Respondent then reached forward with his right hand, he felt a needle stick him in between his knuckles. Respondent reacted to the sting by exclaiming, "What the fuck!" and by wriggling and flicking his right hand to shake the needle off of his hand. The needle fell to the ground. Since the needle had punctured his skin, he immediately feared that he had just contracted AIDS and that "my life's over." His thoughts quickly turned to his wife and his child and his fear that he was "going to lose my family." As Awani was subduing Person A in order to handcuff him, Person A punched Respondent on his right thigh.

Respondent was transported by ambulance directly to the hospital emergency room where he was immediately given the standard "cocktail" of prescribed medications. Immediately after he consumed this "cocktail" of prescribed medications to prevent contracting AIDS, and for the next "30 plus days" that he was on this cocktail, he

suffered numerous side-effects including head pain, dizziness and “a lot of confusion” as well as vomiting and diarrhea. Respondent testified that at the point when Colon was speaking to him at the hospital so that Colon could prepare the Criminal Court Complaint against Person A, he was extremely upset and concerned and focused on his fear for his own health. He later tested [REDACTED] He is no longer taking any medication but he has to [REDACTED] then he will “have to go get tested every six months.”

Respondent confirmed that he made an entry in his Activity Log on July 9, 2010, which states: “F/O [REDACTED] assault on a P.O. Deft. did stab P.O. with needle in right hand. Deft. did punch P.O. Guadalupe in right thigh causing pain.” (RX D)

Respondent testified that on July 15, 2010, he spoke to a Bronx County Assistant District Attorney (ADA) who needed to prepare a Superseding Information against Person A with Respondent as the deponent. Respondent asserted that he told the ADA the “same story” that he testified to on direct examination: That he was stuck by the needle after Person A “pulls back” and Respondent “goes in and grabs his wrist.” The Superseding Information against Person A was admitted into evidence. [It states that Person A “swung his hand forward causing said syringe to strike deponent’s hand.”] (RX C)

On cross-examination, Respondent confirmed that at his official Department interview, which was conducted on September 28, 2011, when he was asked if Person A had intentionally stuck him with the needle he answered, “No.” He then explained to his interviewers that he had accidentally been punctured by the needle that Person A was holding when he went forward and grabbed Person A wrist as Person A “went back.”

FINDINGS AND ANALYSISIntroduction

This analysis will be presented in the chronological order in which the events took place. Since the event cited in Specification No. 1 took place six days after the events cited in Specification Nos. 2 and 3, I will begin by discussing the charges under Specification Nos. 2 and 3.

Specification Nos. 2 and 3

It is charged that on July 9, 2010, Respondent engaged in conduct prejudicial to the good order, efficiency and discipline of the Department in that he caused a Criminal Court Complaint that contained inaccurate information to be filed by Colon with the Bronx County Criminal Court and that he failed to make accurate entries in his Activity Log regarding his encounter with Person A.

Colon signed a Criminal Court Complaint which stated that he had been informed by Respondent "that defendant pulled his hand back and then thrust said syringe forward, causing said syringe to strike informant in the back of the hand." (DX 1) Respondent's entry in his Activity Log regarding his encounter with Person A states "assault on a P.O. Deft. did stab P.O. with needle in right hand. Deft. did punch P.O. Guadalupe in right thigh causing pain." (RX D)

It is not disputed that after the hypodermic needle that Person A was holding punctured Respondent's hand, Respondent exclaimed to his fellow officers that he had been "stung;" that Respondent was transported by ambulance directly to a hospital; and that in the hospital emergency room, Respondent was immediately given the standard

“cocktail” of prescribed medications. The Advocate offered no testimony or other evidence to dispute Respondent’s testimony that after he consumed the “cocktail” of prescribed medications he began to suffer head pain, dizziness and confusion as well as vomiting and diarrhea. Respondent also testified that he became extremely upset and concerned about his health. I credit Respondent’s testimony because his claim regarding his emotional state was corroborated by Colon, who described him as upset and angry, and because it would be a natural reaction for Respondent to be angry and fearful that as a result of having been punctured by Person A’s needle, he might contract AIDS.¹

Thus, the record establishes that when Colon entered the hospital emergency room and asked Respondent to describe his encounter with Person A so that Colon could prepare the Criminal Court Complaint, and when Respondent wrote the entry in his Activity Log regarding his encounter with Person A, Respondent was under the influence of the substances contained in the “cocktail” of prescribed medications he had taken and he was mentally focused on his concern for his own health.

Based on the above, I find that when Respondent was describing his encounter with Person A to Colon, he was suffering from dizziness, his ability to concentrate may have been adversely affected by the medications he had consumed, and his mind was focused on his legitimate personal concern for his own health.

Thus, even if Respondent did use the word “thrust” when he described to Colon how he came to be punctured by the needle that Person A was holding, I find that Respondent was not focused on how he had been punctured, much less the precise wording of the Criminal Court Complaint, but rather on the potential consequences of the puncture wound. Therefore, the mere fact that the word “thrust” was included in the

¹ Respondent did, in fact, contract Hepatitis C.

Criminal Court Complaint that Colon prepared and signed insufficiently proves that Respondent knowingly caused this Criminal Court Complaint to contain inaccurate information.

Finally, although Colon testified that Respondent did use the word “stab” when he described to Colon how he came to be punctured by the needle that Person A was holding and although Respondent’s entry in his Activity Log states “Deft. did stab P.O. with needle,” the word “stab” can be properly used to describe “a wound made by piercing with” a pointed object as well as an intentional thrust with a pointed object.²

Respondent is found Not Guilty of Specification Nos. 2 and 3.

Specification No. 1

It is charged that on July 15, 2010, Respondent engaged in conduct prejudicial to the good order, efficiency and discipline of the Department in that he signed a Criminal Court Complaint³ that contained factually inaccurate information.

It is not disputed that on July 15, 2010, Respondent spoke directly to the Bronx County Assistant District Attorney who, based on what Respondent told him, prepared a Superseding Information (RX C) which alleged that Person A had “swung his hand forward causing” Respondent’s hand to be punctured by the needle that Person A was holding.

Since a full five days had passed since July 9, 2010, the initial shock and confusion that Respondent experienced immediately after being stuck by the needle should have, by then, dissipated sufficiently that he should have been able to accurately

² Webster’s New World Dictionary of American English.

³ The accusatory instrument that Respondent signed on July 15, 2010, was actually a Superseding Information, not a Criminal Court Complaint.

inform the Assistant District Attorney that, as he stated a year later at his official Department interview, Person A had not swung his hand forward but, rather, that Respondent's hand had been accidentally punctured by the needle that Person A was holding when Respondent reached forward and grabbed Person A's wrist after Person A had pulled back.

Although Respondent offered undisputed testimony that he was still taking the "cocktail" of prescribed medications on July 15, 2010, and that he was still suffering side-effects including head pain and confusion, the record is devoid of any testimony or other evidence that as a result of his continued consumption of these medications, Respondent's head pain and confusion were so severe that he would not have been able to accurately inform the Assistant District Attorney that, as he stated at his official Department interview, Person A had not swung his hand forward.

Respondent is found Guilty of Specification No. 1.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 N.Y. 2d 222 (1974).

Respondent was appointed on July 11, 2005. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum. Respondent has no formal disciplinary record.

The Advocate recommended that Respondent's penalty consist of forfeiting 30 vacation days and serving one year on dismissal probation. In support of this penalty

recommendation, the Advocate cited three prior decisions. However, in two of these three cited decisions the penalty that was imposed did not include dismissal probation.

In *Case No. 2006-81689* (March 25, 2008), a 12-year officer who had no prior disciplinary record forfeited 30 vacation days for making false statements on a Field Test Report and in a Criminal Court Complaint. Although both documents contained factual inaccuracies, the trial commissioner found that these inaccuracies were the result of carelessness, not ill will.

In *Case No. 2009-84991* (Oct. 2, 2009), a 17-year officer who had no prior disciplinary record forfeited 30 vacation days for making a sworn false statement by signing a Criminal Court Affidavit which attested that he had recovered drugs from an arrestee when he had not personally recovered the drugs. That officer also falsely testified in court about recovering the drugs, which resulted in the dismissal of the case, and he also failed to notify his Commanding Officer or the Internal Affairs Bureau about his misconduct.

The sole decision cited by the Advocate where the penalty that was imposed included dismissal probation is *Case No. 2007-82558* (Feb. 11, 2008), where a 13-year officer who had no prior disciplinary record forfeited 30 vacation days and was placed on dismissal probation for falsely swearing in a Criminal Court Affidavit that he had been present at the scene of an arrest when he had not been present at the scene, and for repeating this falsehood at his official Department interview.

Here, unlike the officer in that case, Respondent testified truthfully at his official Department interview by candidly acknowledging that Person A had not intentionally stuck him with the needle. Also, in his testimony at this trial, Respondent affirmatively

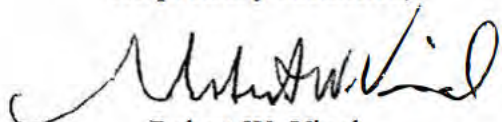
acknowledged that he had been accidentally punctured by the needle that Person A was holding. Respondent's candidness is noteworthy since no one, other than Person A, had asserted that the stabbing was unintentional.

In a decision that is more recent than those cited by the Advocate, *Case No. 2011-4914* (Nov. 26, 2012), a ten-year detective who had no prior disciplinary record received a penalty consisting solely of the forfeiture of 30 vacation days for making inaccurate statements in an affidavit that was filed in Supreme Court in which the detective stated that he had observed a knife and marijuana on two individuals when, in fact, these statements were not true.

Here, it is not disputed that Respondent's statements to the Assistant District Attorney who prepared the Superseding Information that Person A was holding a needle in his hand and that this needle stuck Respondent and punctured his skin were truthful statements. Thus, unlike the detective in the above-cited case who completely invented his claim that he had observed a knife and marijuana on two individuals, the only inaccuracy in the Superseding Information that Respondent signed was his allegation that Person A had swung his hand forward.

Having examined the facts and circumstances surrounding Respondent's misconduct, I recommend that Respondent forfeit 20 vacation days.

Respectfully submitted,


Robert W. Vinal
Assistant Deputy Commissioner - Trials

APPROVED

JUN 10 2014

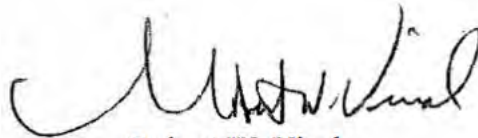
WILLIAM J. BRATTON
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner - Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER CARLOS GUADALUPE
TAX REGISTRY NO. 938623
DISCIPLINARY CASE NO. 2011-6430

Respondent received an overall rating of 3.5 on his 2013 performance evaluation, 3.5 on his 2012 evaluation, and 3.5 on his 2011 evaluation. He has been awarded two Excellent Police Duty medals. He has no formal disciplinary record and no monitoring records.

For your consideration.

A handwritten signature in black ink, appearing to read "Robert W. Vinal", is written over a light blue horizontal line.

Robert W. Vinal
Assistant Deputy Commissioner -- Trials